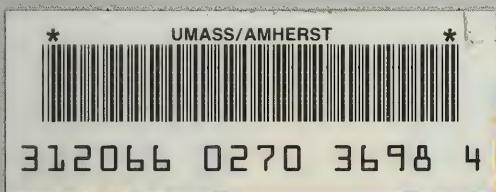


MASS. CAP. 2: M38/15

a Massachusetts consumer guide to

# used vehicle warranty law

program



Consumer Affairs &  
Business Regulation



## about the program.

The Used Vehicle Warranty Law protects consumers who buy used vehicles from a dealer or private party in Massachusetts. (M.G.L. c. 90 §7N 1/4) The law requires dealers to provide consumers with a written warranty against defects that impair the vehicle's use or safety, and requires private parties to disclose any known use or safety defects.

The Used Vehicle Warranty Law provides you with protections and remedies, including mandatory repairs, refunds, or repurchases. It does not cover all vehicles or all defects, and not all problems will qualify your vehicle for repurchase.

If you purchased a vehicle fewer than 14 days ago, the fastest way to get relief may be through the "Lemon Aid Law." Contact the Consumer Affairs hotline immediately for more information, and see page 13.

### **Vehicles Covered:**

The law applies to used cars, vans, trucks and demonstration vehicles not covered by the New Car Lemon Law, and which:

- are sold by a Massachusetts dealer or private party,
- cost at least \$700 (dealer sales only),
- have fewer than 125,000 miles on the odometer when sold (dealer sales only).

Demonstration or executive vehicles are covered under the law under certain circumstances. You must first determine whether the vehicle meets the requirements of the New Car Lemon Law. You may use the Used Vehicle Warranty Law only if you do not qualify to be accepted for the New Car Lemon Law.

### **Vehicles Not Covered:**

The following are not covered under the Used Vehicle Warranty Law:

- ▶ motorcycles, mopeds, dirtbikes;
- ▶ leased vehicles;
- ▶ auto homes, and vehicles built primarily for off-road use;
- ▶ any vehicle used primarily for business purposes, or purchased by, owned by or registered to a business



Applications for state-run arbitration are available on-line  
at <http://www.consumer.com/consumer>

## **sales of vehicles.**

### **Private Party Sales**

The Used Vehicle Warranty Law applies differently to a vehicle purchased from a private party than it does if purchased from a dealer. Under the law, a dealer is anyone who sells four or more vehicles in a 12 month period.

The Used Vehicle Warranty Law requires private party sellers to inform buyers about any and all known defects which impair the safety or substantially impair the use of the vehicle. The law applies to all private party sales regardless of sales price or mileage. If you discover a defect that impairs the vehicle's safety or substantially impairs the use, and can prove that the seller knew about the defect but failed to disclose it, you may cancel the sale within thirty days of purchase. The seller must refund the amount you paid for the vehicle, less 15 cents per mile of use.

Private parties are also bound by the Lemon Aid Law. Contact Consumer Affairs for more information.

### **Dealer Sales**

**Defects Covered:** Only defects that impair your vehicle's use or safety are covered. Defects are not covered if they:

- ▶ affect appearance only;
- ▶ are covered by the manufacturer's express warranty and the dealer assures that the repairs were made;
- ▶ are caused by negligence, abuse, vandalism, or accidents unrelated to the defect;
- ▶ are caused by repair attempts made by someone other than the dealer, its agent, or the manufacturer; or

- are caused by substantial change made by you to the vehicle (such as installing a sunroof that was not part of the vehicle when you bought it).

**Dealer Warranty:** Anyone who sells four or more vehicles in a one-year period is a dealer under the Used Vehicle Warranty Law. Dealer warranties cannot be waived under any circumstances. The dealer must give you a signed, dated, correct copy of the limited used vehicle warranty at the time you purchase the vehicle. The warranty requires the dealer to repair any defect that impairs the vehicle’s use or safety.

**Warranty Length:** The coverage depends on the mileage of the vehicle at the time of purchase as outlined below:

Mileage	Warranty Period
Less than 40,000 miles	90 days or 3,750 miles, whichever comes first
40,000 to 79,999 miles	60 days or 2,500 miles, whichever comes first
80,000 to 124,999 miles	30 days or 1,250 miles, whichever comes first
125,000 miles or over	No express warranty

If the true mileage of the vehicle is unknown at the time of the sale, the warranty period is calculated according to the age of the vehicle as outlined below:

Age of Vehicle	Warranty Period
3 years old or less	90 days or 3,750 miles, whichever comes first
more than 3 and less than 6 years old	60 days or 2,500 miles, whichever comes first
more than 6 years old	30 days or 1,250 miles, whichever comes first

**Warranty Extension:** Your warranty is extended by one day for each day the vehicle is out of service for repairs, and by one mile for each mile it is driven while repairs are being made. In addition, any repair performed on a covered



defect during the warranty period carries its own 30-day warranty. This warranty begins the day the repair is completed and can continue after the original warranty on the car as a whole expires. See the Consumer Affairs Warranty Extension Reference Chart if you need more information on these tolling and extension provisions.

**Dealer Fails to Provide Correct Warranty:** If the dealer does not give you a warranty or gives you one that is incomplete or inaccurate, you are still entitled to warranty repairs. Your warranty, however, will not begin to expire until the dealer gives you a complete, accurate copy of the warranty.

**Warranty Repairs:** The defects must arise during the warranty period. You must return the vehicle to the dealer for repair no more than five business days after the expiration date of the warranty period. The dealer may charge you a one-time \$100 deductible, but only if this amount is written on your copy of the warranty.

**Dealer Refunds:** The limited used vehicle warranty provided by the dealer gives you the right to a refund if the vehicle was either:

- repaired 3 times for the same use or safety defect that continued to exist or recurred during the warranty period,  
OR
- out of service by reason of repair or invalid refusal to repair for at least 11 business days during the warranty period, not necessarily all at one time.

**NOTE:** Business day is defined as Monday through Friday, except for state or federal holidays. When counting the number of business days your car has been out of service, any part of a business day counts as a whole day.

**Waiting for Parts:** If the dealer needs to order parts during a repair attempt, the days out of service while waiting for parts do not count toward the 11 business day requirement of the law. However, your warranty will extend by one day for each day you are waiting for the parts. A maximum of 21 calendar days during the warranty period will not be counted toward the 11 business day limit if parts are ordered. All business days after the 21st day will count.

**Dealer Refuses Repairs:** The dealer may only refuse repairs if you have refused a dealer's offer to buy back the car for the full purchase price. (See next section, Dealer Repurchase.) If the dealer has not offered to repurchase the vehicle, then the dealer must repair all use or safety defects. If the dealer refuses to accept the vehicle for repairs when you present it in person, then the vehicle will be considered "out of service" beginning that day. This and any following business days waiting for the vehicle to be repaired will count toward the 11 business days out of service requirement for a refund. The same rule applies if the dealer fails to take the vehicle within 3 business days of a telephone or written request for a repair.

**Dealer Repurchase:** The dealer has the right to offer to buy the car back for the full repurchase price instead of making repairs. You are responsible for helping to determine the refund amount by giving the dealer copies of your receipts and other documents for each cost to be reimbursed. The dealer must make the repurchase offer in writing. Under the law, you have at least five business days from when you receive the dealer's offer to decide whether to accept the offer.

**WARNING:** If the dealer offers you a full refund under the law, and you refuse to accept it, **YOU WILL NOT BE ENTITLED TO FURTHER WARRANTY REPAIRS UNDER THE WRITTEN WARRANTY PROVIDED BY THE DEALER.** If you do

not agree with the dealer's calculation of the repurchase amount, you can ask the Office of Consumer Affairs and Business Regulation to help calculate it. If the OCABR determines that the full repurchase amount is higher than the amount offered by the dealer, the dealer may either offer you the amount determined by the OCABR or withdraw the offer to repurchase. If the dealer withdraws the offer, you will still be entitled to warranty repairs and can apply for arbitration, if you qualify.

**Keeping Records:** Maintain complete records from the day you buy your vehicle. Save the written warranty; request a copy of the manufacturer's warranty, if applicable; and keep a diary of problems and repair attempts including the dates of service, the problem you reported and mileage at the time of repairs. Get a copy of the work order filled out by the dealer every time you bring the car in for service. Dealers are required by the Attorney General's Motor Vehicle Regulations to give you a work order even if repairs are free. (940 CMR 5.00).

**Returning the vehicle:** If the dealer is going to buy back your vehicle, you will need to work together to meet and exchange the vehicle and its title for a refund. You must transfer the title back to the dealer.

If your title is at the Registry of Motor Vehicles, contact the Title Division at (617) 351-9550. Explain that you are returning your vehicle under the Used Vehicle Warranty Law, and request that a certificate of title be issued to you as soon as possible. If your vehicle is financed, you will need to get a lien release from the finance company. The lien release will enable the Registry to issue a title in your name. Also, you will need to work with the dealer and the finance company to arrange for the dealer to pay the finance company the portion of the loan that is still owed.



**Refund Calculations:** If you have met the requirements for a refund, ask the dealer to repurchase your vehicle. To calculate the amount you are entitled to receive under the law:

#### **ADD**

- ▶ the purchase price including the amount for your trade-in;
- ▶ finance charges;
- ▶ registration fees;
- ▶ the pro-rata cost of payments toward motor vehicle damage, collision and comprehensive insurance;
- ▶ the non-refundable portion of payments made for credit life, and credit accident insurance on your vehicle loan;
- ▶ the non-refundable portion of payments made for any extended warranties and service contracts;
- ▶ unreimbursed costs of towing up to 30 miles;
- ▶ up to \$15 a day for alternate forms of transportation, starting on the third day the car has been out of service for repair;
- ▶ payments made toward the \$100 repair deductible; and
- ▶ any other costs directly related to the defect.

#### **SUBTRACT:**

- ▶ a use allowance of 15 cents per mile for every mile driven from the time of delivery to the date the refund is given; and
- ▶ the amount of any overallowance on a trade-in vehicle.

An "overallowance" or "discount" is the difference between the trade-in amount and the actual cash value of the trade-in vehicle. For example, the dealer may list the trade-in amount as \$2,000 for your trade-in but the trade-in is only worth \$1,500. In this case, \$500 of the trade-in amount is an overallowance. The overallowance will be deducted from your refund only if the amount of the overallowance is clearly and separately listed on your copy of the motor vehicle purchase contract, bill of sale, or other documents given to you at the time of the sale.

If the dealer still has your trade-in vehicle, s/he has the option of returning it to you rather than refunding the trade-in amount. If the dealer has the trade-in and wants to keep it, s/he may keep it and refund you the amount of the trade-in.

The use allowance on your vehicle may be large if you have driven many miles since your purchase. Keep in mind that the use allowance will be based on the miles driven through the time you actually return the vehicle and sign the vehicle's title over to the dealer.

Your refund will not include lawyers' fees, lost wages, excise tax, sales tax, or other costs that are not directly related to the defect. You can apply at your city or town hall for an abatement of excise tax. Contact the Department of Revenue to request information regarding an abatement for the sales tax at (617) 351-9550. If the dealer deducts from the purchase price for mileage, you may not be able to get your sales tax back. Sales tax is only returned by the state when the full payment is refunded. Since the Used Vehicle Warranty Law does not require the dealer to refund the sales tax, you may not be able to recover this cost.

## asserting your rights

If the dealer will not refund your money, you have several options. You may seek mediation, arbitration, or file suit in court.

**Mediation:** This allows both parties to reach a mutually acceptable solution with the help of a facilitator. Mediation is voluntary, requiring both parties' consent. Consumer Affairs offers a face-to-face mediation program for Lemon Law disputes; you may also apply for mediation through your local consumer group.

**Arbitration:** Arbitration is an informal and inexpensive way to resolve your complaint. In arbitration, the consumer and the dealer present evidence about the condition of the vehicle to an impartial person. To qualify for arbitration, you must meet the criteria outlined in this pamphlet. The purpose of the arbitration hearing is to determine whether or not your vehicle qualifies for a refund under the Used Vehicle Warranty Law. This arbitration is "all or nothing." If the arbitrator determines that your vehicle meets the standards of the law, you will be awarded a full refund. If the arbitrator decides that your vehicle is not a "lemon," there will be no award, although you may have rights to different remedies under other laws.

Consumer Affairs must receive your request for arbitration within 6 months of the date your vehicle was delivered to you. The request must be made on an official application provided by Consumer Affairs.

**Court:** You have the right to proceed to court if you have met the Used Vehicle Warranty Law's requirements and the manufacturer refuses to refund your money, or if you are not satisfied with your arbitration decision.

Failure to comply with the Used Vehicle Warranty Law is an unfair and deceptive act or practice under the Massachusetts Consumer Protection Act, c. 93A, which may entitle you to double or triple damages, plus court costs and reasonable attorney's fees. If you are considering court action, you should consult an attorney if you purchased your vehicle for more than \$2000. You or your attorney must begin by sending the dealer a 30-Day Demand Letter.

## other recourse.

**Implied Warranty Law:** The implied warranty of merchantability is a guarantee provided by law in the sale of all consumer products, including automobiles, even if they cost less than \$700 or have been driven 125,000 miles or more before sale to you. The implied warranty is in addition to any express, written warranty. Under the implied warranty, a product must do what it was designed to do with "reasonable" safety, efficiency and ease for a "reasonable" period of time. If it does not run properly, the seller is responsible for repair, replacement or a refund. The law does not define the word "reasonable." This will depend in part upon the condition, age, and sale price of the vehicle.

**NOTE:** The implied warranty of merchantability does not apply to private party sales.

A dealer cannot deny you coverage under this warranty. Under the implied warranty of merchantability, merchants cannot sell products: "AS IS" or "WITH ALL FAULTS." or with a "50/50 WARRANTY" which requires you to split the cost of any repairs with the seller.

**The Lemon Aid Law:** This law allows you to void or cancel a motor vehicle contract or sale if your vehicle fails to pass inspection within seven days from the date of sale AND if the estimated costs of repairs of emissions or safety related defects exceed 10% of the purchase price. This law applies to both dealer and private party sales of cars and motorcycles purchased for personal or family use. The vehicle must be returned to the seller within 14 days from the date of sale.

**Odometer Law:** This law prohibits both dealers and private party sellers from turning back or readjusting the odometer or mileage indicated on any automobile offered for sale. If you can prove that the seller reset the odometer, you can sue for \$1500 or three times the amount of your damages, whichever is greater, along with court costs and attorney fees. Odometer tampering is also a criminal offense.

**Title Requirements:** All vehicles must have a certificate of title issued by the Registry of Motor Vehicles and must be properly endorsed at the time of sale. Dealers must inform you, on request, of the name and address of the prior owner of a vehicle.



*For automobile resources on the internet,  
log on to Consumer World's web site at:  
<http://www.consumerworld.org>*



## **sources of help.**

**For information on your rights** under the Lemon Law, to obtain an arbitration application, or case hearing information:

**Office of Consumer Affairs  
and Business Regulation**

(617) 727-7780 or

Toll Free: (888) 283-3757

**To file a formal complaint (not for arbitration)  
against a dealer:**

**The Office of the Attorney General**

(617) 727-8400

**To check a dealer's complaint history:**

**Consumer Affairs (arbitration history only)**

(617) 727-7780

Toll Free (888) 283-3757

**Attorney General's Office**

(617) 727-8400

**Better Business Bureau**

(617) 426-9000

(508) 755-2548

(413) 734-3114

**For information on auto safety problems  
and recalls:**

**National Highway Traffic**

**Safety Administration**

(800) 424-9393

# other resources.

## Consumer Guides

Banks Selling Insurance  
Home Improvement  
Landlords' Rights and Responsibilities  
Lemon Aid Law  
Managing Credit and Debt  
New & Leased Car Lemon Law  
Shopping Rights  
Small Claims Court  
Tenants' Rights and Responsibilities  
30-day Demand Letter  
Used Vehicle Warranty Law

## Consumer Fact Sheets

Auto Repair Rights  
Credit Card Secrets  
Making Health Clubs Work Out for You  
Stopping Junk Mail, Calls, and E-mail  
Surviving Financial Identity Theft

## Consumer Hotline

(617) 727-7780  
Toll Free (888) 283-3757


## Online Resource Center

<http://www.consumer.com/consumer>

## e-mail

[ask@consumer.com](mailto:ask@consumer.com)

This publication provides general information about Massachusetts consumer issues and procedures. It is not designed to address all questions in detail and consumers are encouraged to seek further guidance by contacting the agency directly.

 Printed on recycled paper

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**Consumer Affairs &  
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